

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

1. STATE OF OKLAHOMA, ex rel. )  
W.A. DREW EDMONDSON, in his capacity as )  
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OKLAHOMA and OKLAHOMA SECRETARY )  
OF THE ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the TRUSTEE FOR )  
NATURAL RESOURCES FOR THE )  
STATE OF OKLAHOMA, )

Plaintiffs, )

v. )

05-CV-0329 TCK-SAJ

1. TYSON FOODS, INC., )  
2. TYSON POULTRY, INC., )  
3. TYSON CHICKEN, INC., )  
4. COBB-VANTRESS, INC., )  
5. AVIAGEN, INC., )  
6. CAL-MAINE FOODS, INC., )  
7. CAL-MAINE FARMS, INC., )  
8. CARGILL, INC., )  
9. CARGILL TURKEY PRODUCTION, LLC, )  
10. GEORGE'S, INC., )  
11. GEORGE'S FARMS, INC., )  
12. PETERSON FARMS, INC., )  
13. SIMMONS FOODS, INC., and )  
14. WILLOW BROOK FOODS, INC., )

Defendants. )

CARGILL TURKEY PRODUCTION, LLC, )

Third Party Plaintiff, )

v. )

CITY OF WESTVILLE AND CITY OF )  
TAHLEQUAH, )

Third Party Defendants, )

and )

TYSON FOODS, INC., TYSON POULTRY,	)
INC., TYSON CHICKEN, INC.,	)
COBB-VANTRESS, INC., GEORGE’S, INC.,	)
GEORGE’S FARMS, INC., PETERSON FARMS,	)
INC., SIMMONS FOODS, INC., AND	)
WILLOW BROOK FOODS, INC.,	)
	)
Third Party Plaintiffs,	)
	)
v.	)
	)
CITY OF TAHLEQUAH, <i>ET AL.</i> ,	)
	)
Third Party Defendants.	)

**DEFENDANTS CARGILL, INC. & CARGILL TURKEY PRODUCTION, L.L.C.’S  
MOTION TO COMPEL AND BRIEF IN SUPPORT**

Defendants Cargill, Inc. and Cargill Turkey Production, L.L.C. (“Cargill,” “Cargill Turkey Production,” or “Defendants”), pursuant to FED. R. CIV. P. 26, ask this Court to issue an Order compelling Plaintiffs to answer Cargill’s Amended First Interrogatories and Cargill Turkey Production’s Amended First Interrogatories. In the alternative, Defendants seek leave to increase the number of interrogatories permitted to be served on Plaintiffs. Defendants certify that they held a LCVR 37.1 conference with counsel for Plaintiffs in an attempt to resolve this dispute. *See* Letter from Theresa Noble Hill, dated August 30, 2006, attached as Ex. 1.

Cargill offers the following in support of this Motion.

**INTRODUCTION**

Plaintiffs refuse to respond to *any* of the Amended Interrogatories served by Cargill and Cargill Turkey Production. They justify this blanket refusal by claiming that, collectively, Defendants’ interrogatories exceed twenty-five in number, including “subparts.” Plaintiffs rationalize their position on two grounds. First, Plaintiffs claim that Defendants’ contention

interrogatories which ask Plaintiffs to state the “factual and legal basis” for certain allegations made against “each Cargill entity at issue” and to provide the “names of witnesses” supporting said allegations somehow constitute “five or six separate questions.” *See* Letter from Sharon Gentry, dated August 28, 2006, attached as Ex. 2. Second, in the parties meet and confer conference, Plaintiffs contended that there are courts (outside the Tenth Circuit) which have found that, if a party answers a portion of a set of interrogatories, that party will be deemed to have waived its right to object to the remaining interrogatories as excessive in number. As Plaintiffs refuse to consent to an enlargement of the number of interrogatories allowed by Rule 33, the Defendants’ discovery is stalled pending this Court’s resolution of this discovery dispute.

#### **ARGUMENT AND AUTHORITIES**

##### **PROPOSITION I:**

##### **DEFENDANTS’ INTERROGATORIES DO NOT EXCEED 25 PER PARTY.**

Plaintiffs erroneously claim that Defendants’ sets of interrogatories each exceed the limit of twenty-five. According to Rule 33(a), a party may not serve more than 25 interrogatories, including “all discrete subparts”. FED. R. CIV. P. 33(a). The Rule, though, does not define what is meant by a *discrete* subpart, as opposed to an allowable subpart. Northern District Local Civil Rule 33.1<sup>1</sup> does not assist determination of this dispute because it offers no definition of what is meant by Rule 33(a)’s use of the word “discrete,” and none of the interrogatories at issue seek

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<sup>1</sup> Local Rule 33.1 states in part:

Interrogatories inquiring as to the existence, location and custodian of documents or physical evidence shall each be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories.

Northern District LCvR 33.1.

information regarding the existence, location, and custodian of documents.<sup>2</sup> Further, Plaintiffs' complaints are not with the "subdivisions" within Defendants' interrogatories, but with the "subparts," as Plaintiffs have calculated them.

Although the Tenth Circuit has not addressed this issue, several courts interpreting the definition of "discrete subparts" have adopted and applied a "related questions" or "common theme" standard. *See, e.g., Nyfield v. Virgin Islands Tel. Corp.*, 200 F.R.D. 246, 247-48 (D.V.I. 2001); *Williams v. Bd. of Cty. Com'rs of Unified Gov't of Wyandotte Cty and Kansas City, Kan.*, 192 F.R.D. 698, 701 (D. Kan. 2000); *Safeco of America v. Rawstron*, 181 F.R.D. 441, 446 (C.D. Cal. 1998); *Kendall v. GES Explosion Servs.*, 174 F.R.D. 684 (D. Nev. 1997); *Ginn v. Gemini*, 137 F.R.D. 320, 322 (D. Nev. 1991); *Myers v. U.S. Paint Co.*, 116 F.R.D. 165, 166 (D. Mass. 1987); *Clark v. Burlington N. R.R.*, 112 F.R.D. 117, 120 (N.D. Miss. 1986). Under this standard, a single question that asks for several pieces of information about the same subject is regarded as one interrogatory if these pieces of information are logically or factually subsumed within and necessary to the primary question. *See, e.g., Clark*, 112 F.R.D. at 118 ("an interrogatory is to be counted as but a single question . . . even though it may call for an answer containing several separate bits of information, if there is a direct relationship between the various bits of information called for."); MOORE'S FED. PRACTICE § 33.30[2], at p. 33-36. Some courts adopt this standard even when a local rule requires that each subpart be counted as an individual interrogatory. *See, e.g., Clark*, 112 F.R.D. at 120.

Courts embrace this "related question" approach for very practical reasons. As the U.S. District Court for the District of Kansas recognized, "if all subparts count as separate

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<sup>2</sup> Even if Local Rule 33.1 did provide persuasive guidance on this point, Federal Rule 33 governs this issue. *See, e.g., St. Paul Fire & Marine Ins. Co. v. Birch, Stewart, Kolasch & Birch, LLP*, 217 F.R.D. 288, 289 (D. Mass. 2003) (local rule trumped by Rule 33).

interrogatories, the use of interrogatories might be unduly restricted or requests for increases in the numerical limit of interrogatories might become automatic.” *Williams*, 192 F.R.D. at 701. The *Ginn* court adopted the related question standard in order to avoid placing parties in the Hobson’s choice of propounding objectionably vague and compound questions on the one hand or unduly restricting the subjects of discovery on the other hand. *Ginn*, 137 F.R.D. at 321-22. The Court explained, “[l]egitimate discovery efforts should not have to depend upon linguistic acrobatics, nor should they sap the court’s limited resources in order to resolve hypertechnical disputes.” *Id.* at 322.

Indeed, allowing such subparts can actually *narrow* the scope of discovery propounded. For example, in *Clark*, a single interrogatory asked for “(a) The full name, number or other designation of the train; (b) The name of the manufacturer of each of the train’s engines, the manufacturer’s serial number and manufacturer’s model number; (c) The number of cars included in the train; and (d) The weight and contents of each car, including the engines, of the train.” *Clark*, 112 F.R.D. 119. Under the related question standard, the court held that the subparts comprised a single interrogatory, and noted that the same information could be gathered with the more general interrogatory, “Please describe [the train] at the time of its collision with the plaintiff’s automobile.” *Id.* The subparts, though, “serve to narrow the scope by informing defendant of the precise descriptive details desired by plaintiff and relieves defendant of any obligation to supply other information.” *Id.* at 120. The same is the case here.

Here, neither of Defendants’ sets of interrogatories to Plaintiffs exceeds twenty-five separate interrogatories. Cargill asks seventeen numbered interrogatories while Cargill Turkey Production’s set contains eighteen. *See* Cargill, Inc.’s Amended First Interrogatories and Requests for Production to Plaintiff, attached as Ex. 3, and Cargill Turkey Production, LLC’s

Amended First Interrogatories and Requests for Production of Documents to Plaintiffs, attached as Ex. 4. Contrary to Plaintiffs' objections, seeking the names of witnesses who will testify regarding the factual or legal basis of Plaintiffs' claims is logically and necessarily related to asking for "*the basis*" for a claim. Similarly, Plaintiffs chose to sue both Cargill and Cargill Turkey Production, and Defendants are entitled to know why. In 2004 Cargill spun off its turkey production operation to the related entity, Cargill Turkey Production, and ceased its own turkey production. The activities of one pick up where the other leaves off. By seeking information for both in their interrogatories, Defendants seek only that Plaintiffs provide information on certain topics over the course of the Cargill entities' turkey production history. Plaintiffs presumably seek to hold the Cargill entities liable over this entire time period. Defendants are entitled to know what materials Plaintiffs will use to support these contentions and should not be forced to split these related questions simply by virtue of Plaintiffs' choice of defendants. Thus, viewed under the imminently practical related question standard, Defendants' interrogatories fall well within the limitations imposed by the Rules. Plaintiffs, therefore, should be required to answer all of Defendants' interrogatories in full.

**PROPOSITION II:**

**ALTERNATIVELY, DEFENDANTS SHOULD BE ALLOWED TO  
EXCEED TWENTY-FIVE INTERROGATORIES**

In the event this Court finds that Defendants' sets of interrogatories exceed twenty-five, Defendants ask this Court for leave to serve the interrogatories. Under Rule 33, a party may exceed twenty-five interrogatories with leave of court. *See* FED. R. CIV. P. 33(a). "Rather than applying a rote test, the courts examine each request in the context of the case. *See, e.g., Duncan v. Paragon Publishing, Inc.*, 204 F.R.D. 127, 128-29 (S.D. Ind. 2001). Leave to file

interrogatories in excess of twenty-five is generally granted under a “good cause” standard. *See, e.g., Lykins v. Attorney General*, 86 F.R.D. 318, 318 (E.D. Va. 1980). “‘Good cause’ is clearly established where the proposed interrogatories are reasonably calculated to advance the orderly pretrial development of the pending case under the mandate of Federal Rule of Civil Procedure 1.” *Crown Center Redevelopment Corp. v. Westinghouse Elec. Co.*, 82 F.R.D. 108 (W.D. Mo. 1979). Cases involving complex, technical, or significant amounts of money are generally considered to meet this standard. *See Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 297 (E.D. Pa. 1980); MANUAL FOR COMPLEX LITIGATION § 11.462 (4th ed. 2004). Even when courts are unwilling to apply a “related question” standard when counting interrogatories and subparts, a court should “grant permission to exceed the local limitation liberally if the subparts are ‘related questions.’” *See Valdez v. Ford Motor Co.*, 134 F.R.D. 296, 298 (D. Nev. 1991). Good cause is established when the “interrogatories proposed are reasonably calculated to advance the orderly pretrial development of the pending case consistent with the construction which must be given Rule 33, F.R.Civ.P., under the mandate of Rule 1, F.R.Civ.P.” *See Crown Center Redevelopment Corp. v. Westinghouse Electric Corp.*, 82 F.R.D. 108, 109 and 114 (W.D. Mo. 1979).

The lawsuit brought by Plaintiffs is nothing if not complex and technical. Weighing in at almost 40 pages, Plaintiffs’ Amended Complaint seeks recovery under nine counts in 147 enumerated paragraphs, not including the prayer for relief. *See*, Amended Complaint, Dkt. 18. Their claims range from state law to federal law and back to general common law, and their Amended Complaint features a 69 paragraph prelude before it even reaches the Plaintiffs’ legal contentions. Plaintiffs named fourteen defendants, and numerous additional third party defendants have been named. This is not a garden variety lawsuit.

Defendants require answers to their propounded discovery in order to reasonably respond to Plaintiffs' claims and to orderly advance the status of this litigation. The interrogatories propounded by Defendants are clearly confined to issues and matters that are in dispute. They are designed to efficiently discover both the factual and legal grounds for the claims made by Plaintiffs and to identify the witnesses who will testify regarding the same. Plaintiffs' answers to these interrogatories will likely inform any future discovery propounded by Defendants, and no other discovery mechanism can provide the information sought by them. Though Defendants could potentially swamp Plaintiffs with requests for production of documents and then sift through Plaintiffs' production to hazard a guess as to the basis for Plaintiffs' contentions, put simply, Defendants should not have to. The very purpose of interrogatories is to gather the information sought by Defendants. This information and the method by which it is sought by Defendants is reasonable and the number of interrogatories, even if counted in the manner used by Plaintiffs, is not excessive for this lawsuit and the issues to be tried. Accordingly, this Court should grant leave to Defendants to serve the attached interrogatories.

### CONCLUSION

Plaintiffs' refusal to respond to any of Defendants' interrogatories is based upon a hyper-technical and contorted interpretation of the interrogatories, FED. R. CIV. P. 33(a) and LCVR 33.1. Each of the interrogatories logically relate to and are necessarily part of the same issue subject, and therefore, each numbered interrogatory should be counted as a single interrogatory. Alternatively, to the extent this Court finds otherwise, Defendants ask this Court to grant them leave to serve the interrogatories attached to this Motion.

WHEREFORE Defendants Cargill, Inc. and Cargill Turkey Production, L.L.C. ask this Court to issue its Order compelling Plaintiff State of Oklahoma to answer discovery, or in the



alternative, for leave to increase the number of interrogatories permitted to be served on Plaintiff  
State of Oklahoma.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I certify that on the 1st day of September, 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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